

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKY ITALOUS NELSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57347

FILED

JUL 15 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus filed pursuant to the remedy provided in Lozada v. State, 110 Nev. 349, 359, 871 P.2d 944, 950 (1994). Eighth Judicial District Court, Clark County; James M. Bixler, Judge.


Appellant Ricky Nelson contends that his guilty plea was invalid because the district court did not advise him that he had the right to a jury determination on the deadly weapon enhancement. A challenge to the validity of a guilty plea is not generally appropriately raised on direct appeal, see Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986), limited by Smith v. State, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994); however, Nelson raised this issue in his original post-conviction petition for a writ of habeas corpus, and on appeal, we declined to address the issue, noting that it was more properly suited for direct appeal, Nelson v. State, Docket No. 52306 (Order of Affirmance, September 3, 2009). Therefore, under the circumstances, the district court did not err by addressing the merits of Nelson's claim in the context of the Lozada petition.

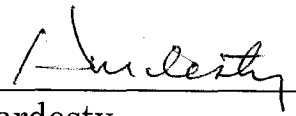
We presume that the district court correctly assessed the validity of the defendant's plea and we will not reverse its determination "absent a clear showing of an abuse of discretion." Bryant, 102 Nev. at 272, 721 P.2d at 368. Nelson acknowledged in his guilty plea agreement that he was giving up the right to a public trial where the State would bear the burden of proving each element of the charged offense beyond a reasonable doubt. The attached amended information set forth all of the elements of the charged offenses and specifically stated that Nelson was charged with the use of a deadly weapon. And Nelson acknowledged at the change of plea hearing that he read and signed the guilty plea agreement, went over the agreement with counsel and understood his rights and responsibilities under the agreement, and participated in taking property by force with a gun from the victims. We conclude that Nelson failed to demonstrate that he was not sufficiently advised of his right to a jury trial on the use of a deadly weapon, and the district court did not abuse its discretion by denying this claim. See Palmer v. State, 118 Nev. 823, 831, 59 P.3d 1192, 1197 (2002) (a guilty plea will not be invalidated if the totality of the circumstances indicates that the defendant was aware of a given consequence prior to entry of the plea); Bryant, 102 Nev. at 272, 721 P.2d at 368 (the burden is on defendant to show that his plea was not entered intelligently and knowingly).

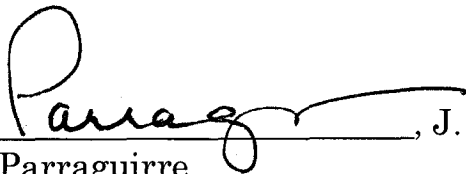
To the extent Nelson contends that the district court erred by denying his claim that his guilty plea was invalid because he was not made aware that the sentences for the deadly weapon enhancements would run consecutive to the sentences for the underlying charges, this claim is belied by the record. Nelson was informed in the guilty plea agreement that each robbery count carried a possible sentence of 2 to 15

years in prison plus an equal and consecutive term of 2 to 15 years for the deadly weapon enhancement. And, as stated above, Nelson acknowledged at the change of plea hearing that he read and signed the guilty plea agreement, went over the agreement with counsel, and understood his rights and responsibilities under the agreement. Therefore, we conclude the district court did not abuse its discretion by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.¹


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. James M. Bixler, District Judge
Oronoz Law Offices
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹Although we filed the appendix submitted by Nelson, it fails to comply with the Nevada Rules of Appellate Procedure because it does not contain an index and does not include several documents necessary for this court's determination of the issues raised in the appeal. See NRAP 3C(e)(2)(C); NRAP 30(b); NRAP 30(c)(2). We were able to resolve this appeal on the merits only due to the State's inclusion of the necessary documents in its appendix to the fast track response. Counsel for Nelson is cautioned that future failure to comply with the appendix requirements may result in the imposition of sanctions. NRAP 3C(n).